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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,946	02/06/2001	Hideo Kawahara	1232-4680	3252
27123	7590	01/25/2007	EXAMINER	
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			VIEAUX, GARY	
			ART UNIT	PAPER NUMBER
			2622	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	09/777,946	KAWAHARA, HIDEO
	Examiner	Art Unit
	Gary C. Vieaux	2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,10,12,19,21,22 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,10,12,19,21,22 and 27-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

The Amendment, filed November 17, 2006, has been received and made of record. In response to the most recent Office Action, dated August 23, 2006, claims 1, 5 12, 21, and 22 have been amended. Claims 2-9, 11, 13-18, 20, 23-26, and 31-38 have been previously cancelled.

Response to Amendment

Regarding amended claim 1, the claim has been amended to correct the 10 previously identified informality regarding punctuation, and therefore, the objection to claim 1 is withdrawn.

Response to Arguments

Applicant's arguments filed November 17, 2006 have been fully considered but 15 they are not persuasive.

Regarding the 35 U.S.C. §112 first paragraph rejections of claims 1, 12, 21, and 22, Applicant submits that although the word "histogram" does not exist in the third embodiment, it is described in the first and the second embodiments. (Specification at page 17, line 20, to page 18, line 9, and page 21, line 19, to page 22, line 8, 20 respectively), and therefore, the claim elements recited in claim 12, 21 and 22 are actually supported by the specification. The Examiner respectfully disagrees.

Figure 11 is a block diagram showing the arrangement of an image sensing

apparatus according to the third embodiment of the present invention (Specification, p.23 lines 23-25.) Although the third embodiment employs a “range”, per se, (Specification, p.28, line 26), this “range” is not found to be employed in conjunction with a histogram anywhere within this embodiment (see Specification, p.23-29.) Based 5 on the foregoing, the Examiner stands behind the 35 U.S.C. §112 first paragraph rejection of claims 1, 12, 21, and 22 for failing to comply with the written description requirement.

It is also noted that the most recent amendments (dated November 17, 2006, and July 26, 2006) possibly, pending resolution of the existing §112 issues, deviate from 10 the originally claimed subject matter, and therefore would be subject to a restriction by original presentation.

Regarding the 35 U.S.C. §112 second paragraph rejections of claims 1, 12, 21, and 22, Applicant has amended the application in an attempt to clarify the invention as recited in claims 1, 12, 21, and 22 (Remarks, p.7.) However, ambiguity still exists. 15 Based on the claims as interpreted, the first two instances of the term “areas” (now “area”) appeared to be correctly applied prior to amendment, in that they referred to the areas that the luminance signals are applied to (e.g., claim 1, lines 3 and 5.) Original ambiguity arose in connection with those instances of “areas” and the use of the term “area” (e.g., claim 1, lines 7 and 10), to which it was unclear whether the “area” in 20 question relates to the “plurality of areas” (e.g., claim 1, lines 3 and 5) or to an “area” of the histogram (e.g., claim 1, lines 7-8.) As this ambiguity still exists, which prevents the

metes and bounds of the claims to be readily ascertained, the Examiner stands behind the 35 U.S.C. §112 second paragraph rejection of claims 1, 12, 21, and 22.

CLAIM REJECTIONS

5 ***Claim Rejections - 35 USC § 112, first paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. §112:

10 The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

15 **Claims 1, 12, 21 and 22** are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 1, 12, 21, and 22 included language that employs a histogram of a luminance distribution in conjunction with predetermined ranges. However, the Specification was not found to 20 include support for these limitations employed in concert with one another. The closest interpretation involving any "range" was found to exist with a different embodiment that did not employ a histogram (third embodiment, Specification p.23-29.)

25 **Claims 10, 19, and 27-30** are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, based on their dependence to rejected independent claims 1, 12, 21, and 22.

Claim Rejections - 35 USC § 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5 **Claims 1, 12, 21 and 22** are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current 10 U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Additionally, independent claims 1, 12, 21, and 22 include indefinite language that generates multiple applications/interpretations of the terms "area", and therefore does not distinctly define the claimed subject matter. These include the plurality of an 15 "area" from which the luminance signals are derived and an "area" of a histogram; an area which also is /can be confused with the magnitudes or blocks found within the histogram (Specification, p. 12-19.) Therefore, the metes and bounds of the claims cannot be readily ascertained.

Claims 10, 19, and 27-30 are rejected under 35 U.S.C. §112, second paragraph, 20 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, based on their dependence to rejected independent claims 1, 12, 21, and 22.

It is also noted by the Examiner, that due to the existing 35 U.S.C. §112 rejections, an examination on the merits of the claims is precluded.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE 5 MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of 10 the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact

Any inquiry concerning this communication or earlier communications from the 15 examiner should be directed to Gary C. Vieux whose telephone number is 571-272-7318. The examiner can normally be reached on Monday - Friday, 8:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NgocYen T. Vu can be reached on 571-272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

- 5 For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Gary C. Vieaux
Examiner
Art Unit 2622

Gcv2



NGOC-YEN VU
SUPERVISORY PATENT EXAMINER